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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,163	09/30/2003	Olivier Carli	71247-0009	9813

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EXAMINER
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PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/673,163

Applicant(s)

CARLI ET AL.

Examiner

Pedro Philogene

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 30 September 2003.
- ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Apparatus Papers

- ☐ The specification is objected to by the Examiner.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
  - 1. ☐ Certified copies of the priority documents have been received.
  - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,4-6,8-13,21,22,23 are rejected under 35 U.S.C. 102(e) as being anticipated by Bresina (6,979,353).

With respect to claim 1, Bresina discloses an intersomatic implant comprising two sagittal walls (104,106) connected by an anterior wall (108) and a posterior cross wall (110) the wall defined an open volume (134); present edges on one side to define a first cross side (128) and on the other side, to define a second cross side (128), characterized in that the edges of the anterior wall (108) of both cross sides present inclined profiles converging in the direction of the outer side of the anterior wall so that this anterior wall forms a projection to aid in the penetration of the intervertebral space; as best seen in FIG.4.

With respect to claims 4-6, 8-13, 21-23, Bresina discloses all the limitations, for example edges of the posterior wall of both cross sides (130) present inclined profiles converging in the direction of the outer side; the circular connection (108) of the two walls, both posterior and anterior walls being tapered; as best seen in FIG.4, pyramidal notches (124).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,3,19,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bresina (6,979,353) in view of Moret (6,699,288).

With respect to claims 2,3,19,20, it is noted that Bresina did not teach of a device wherein the anterior wall is laterally off-center with respect to posterior wall and wherein the width of anterior wall is greater than that of posterior wall; as claimed by applicant. However, in a similar art, Moret evidences the use of a device wherein the anterior wall is laterally off-center with respect to posterior wall and wherein the width of anterior wall is greater than that of posterior wall to facilitate the introduction and position of the cage in the intervertebral region.

Therefore, given the teaching of Moret, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Bresina, as taught by Moret, to facilitate the introduction of the device in the intervertebral region.

Claims 7, 14-18, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bresina (6,979,353) in view of White et al. (6,991,653).

With respect to the above claims, it is noted that Bresina did not teach of a device wherein the sagittal walls present a bi-convex profile; as claimed by applicant. However, in a similar art, White et al evidence the use of device with sagittal walls presenting a bi-convex profile to facilitate locating the disc replacement approximately in the anterior-posterior middle of the endplate of adjacent vertebrae.

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Therefore, given the teaching of White et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Bresina, as taught by White et al to facilitate locating the disc replacement approximately in the anterior-posterior middle of the endplate of adjacent vertebrae.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6,964,687	11-2005	Bernard et al.
6,458,159	10-2002	Thalgott
6,716,245	04-2004	Pasquet et al.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene  
May 11, 2006



PEDRO PHILOGENE  
PRIMARY EXAMINER